

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENWOOD DIVISION

Antrell Jermaine Fordham, # 262332,	)	C/A NO. 8:08-4110-CMC-BHH
	)	
Plaintiff,	)	<b>OPINION and ORDER</b>
	)	
v.	)	
	)	
Dr. John Pate,	)	
	)	
Defendant. <sup>1</sup>	)	
_____	)	

This matter is before the court on Plaintiff's *pro se* complaint, filed in this court pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Bruce Howe Hendricks for pre-trial proceedings and a Report and Recommendation ("Report"). On October 6, 2009, the Magistrate Judge issued a Report recommending that the complaint be dismissed for failure to exhaust administrative remedies, or, in the alternative, that Defendant's motion for summary judgment be granted and this matter dismissed with prejudice as to Plaintiff's federal causes of action. The Report further recommends that to the extent Plaintiff's allegations could be construed as containing state law causes of action, this court decline to exercise supplemental jurisdiction over any such claims. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff filed objections to the Report and a Motion for Summary Judgment on October 23, 2009.

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<sup>1</sup>Dr. Edward Stahl, Jr. was dismissed by stipulation of the parties on September 15, 2009. Dkt. # 48.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order.

Plaintiff's complaint is defective for failure to exhaust administrative remedies. However, even if Plaintiff were to properly exhaust his administrative remedies and return to this court, he cannot overcome Defendant's motion for summary judgment. Plaintiff contends in his objections that Defendant has been deliberately indifferent to his serious medical condition. However, Plaintiff's medical records show that Plaintiff has been seen and treated repeatedly for his stomach condition. Therefore, Defendant cannot be said to have been deliberately indifferent to Plaintiff's serious medical condition.

Defendants' motion for summary judgment is **granted** and Plaintiff's motion for summary judgment is **denied**. Plaintiff's federal claims are dismissed with prejudice. Pursuant to 28 U.S.C. § 1367(c)(3), the court dismisses any remaining state law claim without prejudice.

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina  
October 30, 2008